

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA**

In re

RICHARD ISAAC FINE,

Debtor(s).

BK. No. LA 02-37680-BB

Chapter 7

**AMENDED ORDER GRANTING IN
PART AND DENYING IN PART
MOTION OF A-1 BUSINESS
PRODUCTS, INC. FOR STAY
PENDING APPEAL**

(No Hearing Requested)

The Court having reviewed and considered the motion of A-1 Business Products Inc. ("A-1") for a stay pending appeal of the Court's April 22, 2005 "Order re Motion for Order: (1) Approving Compromise of Controversies with Members of the Class Action in the Paul Di Flores, et al. v. EHG National Health Services Case, No. BC 150607, Pending in the Superior Court, State of California, County of Los Angeles; (2) Approving Form of Settlement Agreement and Mutual General Releases; and (3) Granting Relief from Automatic Stay" (the "April 22 Order"), hereby finds as follows:

1. Contrary to A-1's contention, it was appropriate for the Court to grant the trustee's motion for approval of a compromise (the "Motion") under 11 U.S.C. § 363(f) in that:

20/10/05

1 a. the parties specifically discussed and the Court explicitly considered
2 whether the compromise should be treated and approved as a sale under section 363(f)
3 of the Bankruptcy Code at the time of hearing on the Motion, objecting parties
4 specifically briefed these issues, and no party in interest requested that additional time
5 be given to brief such issues notwithstanding the fact that they were not raised in the
6 original moving papers;

7 b. no party in interest was unfairly surprised or prejudiced by the Court's
8 resolution of issues under section 363(f) at the time of hearing on the Motion or in the
9 text of the April Order in that the Court itself noted the applicability of section 363(f) and
10 the need for the Motion to pass muster under this section in the tentative ruling that it
11 issued on the Motion in connection with the February 23, 2005 hearing thereon, which
12 tentative ruling provided in pertinent part:

13 Therefore, it is correct to analogize this motion, as have the secured creditors, to
14 a motion to sell the estate's interest in the proceeds generated by the settlement of this
15 class action free and clear of their liens. However, the trustee seeks an order clarifying
16 that these funds are free and clear funds of the estate. She is not proposing to leave
17 these funds in an interest-bearing account with the liens to attach to the proceeds while
the Court resolves any questions that may exist as to the validity/priority/amount of the
liens. This is inappropriate and does not provide secured creditors whose liens have
not been avoided with adequate protection for the value of their interests in Mr. Fine's
recovery in the class action.

18 c. the Court did in fact make findings at the April 6, 2005 hearing on the
19 Motion as to the propriety of a sale free and clear of secured creditors liens under
20 section 363(f), finding that it was appropriate to authorize such a sale under section
21 363(f)(5).

22 2. Although the record contained sufficient evidence for the Court to make a
23 good faith finding under section 363(m) at the time of hearing on the Motion and the
24 Court did make sufficient factual findings at the hearing on the Motion to support such a
25 finding, the trustee did not request such a finding until shortly before the conclusion of
26

1 the final hearing on the Motion, leaving limited opportunity for A-1 or other objecting
2 parties to respond thereto.

3 3. In light of the foregoing, the Court believes that there is some prospect that A-
4 1 may prevail on the merits of its appeal of the portion of the April Order that includes a
5 good faith finding under section 363(m). (The Court does not believe that there is a
6 reasonable prospect or a substantial possibility that A-1 will prevail on the merits of any
7 other argument that it has raised on appeal.)

8 4. Absent a stay pending appeal of the portion of the April Order that makes
9 section 363(m) applicable, A-1 may suffer irreparable injury pending the resolution of its
10 appeal of the April Order.


11 5. The issuance of a stay pending appeal of the portion of the April Order that
12 contains a finding under section 363(m) will not impose a cognizable hardship on other
13 interested parties.

14 In light of the foregoing, **IT IS ORDERED** as follows:

15 1. A-1's motion for a stay pending appeal of the April Order is hereby granted
16 solely with respect to the effectiveness of paragraph 17 of the April Order. The
17 effectiveness of paragraph 17 is hereby stayed, pending the outcome of A-1's appeal of
18 this portion of the April Order.

19 2. In all other respects, A-1's motion for a stay pending appeal is denied.

20 DATED: 5/5/05

21 
22 SHERI BLUEBOND
23 United States Bankruptcy Judge
24
25
26

CERTIFICATE OF SERVICE BY MAIL

MAY 06 2005

I certify that a true copy of this **ORDER** was mailed on
to the parties listed below:

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DEPUTY CLERK